

ESTTA Tracking number: **ESTTA274096**

Filing date: **03/24/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188363
Party	Plaintiff Gecko Trading Company, Inc.
Correspondence Address	Bruce B. Brunda Stetina Brunda Garred & Brucker 75 Enterprise Ste 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com
Submission	Motion for Default Judgment
Filer's Name	Bruce B. Brunda
Filer's e-mail	opposition@stetinalaw.com
Signature	/Bruce B. Brunda/
Date	03/24/2009
Attachments	MotionforDefault.pdf (22 pages)(485057 bytes)

Case: TBEAR-129M

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN RE SERIAL NO. 77/492,941

Gecko Trading Company, Inc.,)	Opposition No.: 91188363
)	
Opposer,)	
)	
vs.)	
)	
Gekko Japan Co., Ltd,)	
)	
Applicant.)	
)	

MOTION FOR ENTRY OF DEFAULT

BOX TTAB, NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

Opposer, Gecko Trading Company, Inc., hereby brings this Motion for Entry of Default Judgment. As a basis for this motion Opposer advises as follows.

- On January 12, 2009, Opposer filed its Notice of Opposition (attached hereto as Exhibit A) [exhibits to Notice of Opposition are excluded].
- On January 12, 2009, the Trademark Trial and Appeal Board (TTAB) issued its Order instituting the proceedings and setting the dates (attached hereto as Exhibit B).
- Applicant did not timely file an Answer to the Notice of Opposition, or a Motion for an Extension of Time, on or before the due date of February 21,

2009.

- Because of Applicant's failure to file an Answer to the Notice of Opposition, Opposer maintains that it is appropriate under 37 C.F.R. § 2.106(a) and Fed. R. Civ. P. 55(a) that a Default Judgment be entered by the Board.

WHEREFORE, Opposer respectfully requests that a Default Judgment be entered and that United States Trademark Application Serial No. 77/492,941 be declared abandoned.

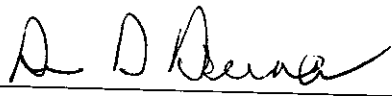
As of the filing date of this Motion for Entry of Default Judgment, no Answer has been filed by Applicant. Therefore, in view of the forgoing, an Entry of Default in this matter is proper.

A Proof of Service to Applicant is attached hereto. Should any additional fees be necessary, please charge Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: March 23, 2009

By: 
Bruce B. Brunda, Reg. No. 28,497
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer,
Gecko Trading Company, Inc.

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **March 24, 2009**, the attached **MOTION FOR ENTRY OF DEFAULT** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Robert L. Titley
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee WI 53202

Executed on **March 24, 2009** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Sherrie Eng

EXHIBIT A

ESTTA Tracking number: **ESTTA260134**

Filing date: **01/12/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Gecko Trading Company, Inc.
Granted to Date of previous extension	01/10/2009
Address	PO Box 1650 Makawao, HI 96768 UNITED STATES
Attorney information	Bruce B. Brunda Stetina Brunda Garred & Brucker 75 Enterprise Ste 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com Phone:949-855-1246

Applicant Information

Application No	77492941	Publication date	11/11/2008
Opposition Filing Date	01/12/2009	Opposition Period Ends	01/10/2009
Applicant	Gekko Japan Co., Ltd 4-59-3 Yoyogi, Shibuya-ku Tokyo, 151-0053 JAPAN		

Goods/Services Affected by Opposition

Class 014. All goods and services in the class are opposed, namely: jewelry, bracelets, rings, necklaces, and earrings

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1510173	Application Date	07/25/1984
Registration Date	10/25/1988	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1982/04/30 First Use In Commerce: 1983/03/20 CLOTHING, NAMELY SHIRTS, DRESSES, SWEATSUITS, HATS, SHORTS, SKIRTS AND SHOES

U.S. Registration No.	1512691	Application Date	07/15/1985
Registration Date	11/15/1988	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1982/07/00 First Use In Commerce: 1983/03/00 TEXTILE TOTE BAGS AND DUFFLE BAGS		


U.S. Registration No.	1514657	Application Date	05/26/1987
Registration Date	11/29/1988	Foreign Priority Date	NONE
Word Mark	MAUI GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1982/04/30 First Use In Commerce: 1983/03/20 CLOTHING, NAMELY SHIRTS, DRESSES, SWEATSUITS, HATS, SHORTS, SKIRTS AND SHOES		

U.S. Registration No.	1786819	Application Date	09/18/1992
Registration Date	08/10/1993	Foreign Priority Date	NONE
Word Mark	GECKO HAWAII		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/05/30 First Use In Commerce: 1986/05/30 clothing; namely, shirts, dresses, sweatsuits, hats, shorts, skirts and shoes		

U.S. Registration No.	1943766	Application Date	09/29/1994
Registration Date	12/26/1995	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1982/04/00 First Use In Commerce: 1982/04/00 retail and wholesale stores featuring apparel, beach products, stuffed dolls and		

	novelty items
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U.S. Registration No.	2049055	Application Date	04/22/1996
Registration Date	04/01/1997	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1996/03/20 First Use In Commerce: 1996/03/20 skin cleansing soaps and gels, bubble bath, cosmetics, namely, body lotions, skin moisturizers, after-sun lotions, hair products, namely, hair lotions, hair shampoos, hair conditioners, and essential oils for personal use		

U.S. Registration No.	2260689	Application Date	02/23/1998
Registration Date	07/13/1999	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1984/02/08 First Use In Commerce: 1985/01/01 SUNGLASSES, EYEGLASSES, EYEGLASS CASES, EYEGLASS STRAPS TO ATTACH TO EYEGLASSES		

U.S. Registration No.	2287612	Application Date	07/10/1998
Registration Date	10/19/1999	Foreign Priority Date	NONE
Word Mark	GECKO HAWAII		

Design Mark	GECKO HAWAII
Description of Mark	NONE
Goods/Services	Class 024. First use: First Use: 1992/05/00 First Use In Commerce: 1992/05/00 TOWELS

U.S. Registration No.	2308720	Application Date	07/10/1998
Registration Date	01/18/2000	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark	GECKO		
Description of Mark	NONE		
Goods/Services	Class 024. First use: First Use: 1992/05/00 First Use In Commerce: 1992/05/00 TOWELS		

U.S. Registration No.	2347417	Application Date	11/13/1995
Registration Date	05/02/2000	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark	GECKO		
Description of	NONE		

Mark	
Goods/Services	Class 028. First use: First Use: 1999/05/13 First Use In Commerce: 1999/08/24 sporting goods, namely, snowboards, surfboards, skateboards and in-line skates


U.S. Registration No.	2446676	Application Date	10/20/1997
Registration Date	04/24/2001	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1985/12/07 First Use In Commerce: 1986/09/20 jewelry, clocks, watches		

U.S. Registration No.	2453448	Application Date	10/20/1997
Registration Date	05/22/2001	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/06/08 First Use In Commerce: 2000/06/08 beverage glassware, mugs, plates		

U.S. Registration No.	2463090	Application Date	11/03/1997
Registration Date	06/26/2001	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1985/01/01 First Use In Commerce: 1987/11/11 toys, namely, stuffed toys animals and flying disks		

U.S. Registration No.	1903602	Application Date	10/02/1992
Registration Date	07/04/1995	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/02/06 First Use In Commerce: 1995/02/06 clothing; namely, pajamas		

U.S. Registration No.	2482688	Application Date	10/20/1997
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Registration Date	08/28/2001	Foreign Priority Date	NONE
Word Mark	GECKO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2000/06/06 First Use In Commerce: 2000/06/06 [cigars, cigarettes, and] smoking accessories, namely, cigarette and cigar lighters not of precious metal, [cigar holders not of precious metal,] pipe cleaners, cigar humidors, cigar cutters, cigarette holders not of precious metal, [and rolling papers]		

Attachments	75438293#TMSN.gif (1 page)(bytes) 75516507#TMSN.gif (1 page)(bytes) 75516508#TMSN.gif (1 page)(bytes) 75018517#TMSN.gif (1 page)(bytes) 75375645#TMSN.gif (1 page)(bytes) NoticeofOpposition 129M.pdf (41 pages)(304790 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bruce B. Brunda/
Name	Bruce B. Brunda
Date	01/12/2009

Case: TBEAR-129M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN RE SERIAL NO. 77/492,941

Gecko Trading Company, Inc.,)	Opposition No.:
)	
Opposer,)	
)	
vs.)	
)	
Gekko Japan Co., Ltd,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

BOX TTAB - FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

In the matter of the application of Gekko Japan Co., Ltd of Tokyo, Japan (hereinafter "Applicant") for registration of the trademark 8010 GEKKO (stylized), Application Serial No. 77/492,941, published November 11, 2008 at TM 514, Gecko Trading Company, Inc., a Hawaii corporation, with offices at 3621 Baldwin Avenue, Makawao, Hawaii (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 77/492,941, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive development, advertising, licensing and marketing of a variety of products including

shirts, dresses, sweatsuits, hats, shorts, skirts, and shoes, as well as textile tote bags and duffle bags; skin cleansing soaps and gels; sunglasses and eyeglasses; towels; sporting goods and jewelry; picture frames and acoustically transparent art prints designed specifically for use as decorative loudspeaker covers or loudspeaker grilles; electroacoustic sound generators and speakers and confectionaries. In connection therewith, Opposer has licensed used, and/or filed federal applications with an intent to use, in interstate commerce, the marks GECKO, MAUI GECKO, GECKO HAWAII, GEKKO and ART GEKKO (hereinafter collectively referred to as the GECKO TRADEMARKS) for the aforementioned goods since long prior to Applicant's filing dates of the applications of Serial No. 77/492,941 for the mark 8010 GEKKO (stylized).

2. Since at least as early as April, 1982, Opposer has made use of its GECKO TRADEMARKS throughout the United States in interstate commerce. Since adoption of its GECKO TRADEMARKS, Opposer has continuously used those marks throughout the United States in interstate commerce.

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has created valuable goodwill among the purchasing public under its GECKO TRADEMARKS.

4. As a result of the continuous and extensive use of the GECKO TRADEMARKS by Opposer, those marks have become and continue to function as a valuable business and marketing asset of Opposer, and serve to indicate to the trade and consuming public the products originating from Opposer and its authorized representative.

5. Opposer has obtained United States Trademark Registration No. 1,510,173, registered October 25, 1988, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 1**.

6. Opposer has obtained United States Trademark Registration No. 1,512,691, registered November 15, 1988, for the mark GECKO for the goods set forth in that registration. A copy of that registration n is attached hereto as **Exhibit 2**.

7. Opposer has obtained United States Trademark Registration No. 1,514,657, registered November 29, 1988, for the mark MAUI GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 3**.

8. Opposer has obtained United States Trademark Registration No. 1,786,819, registered August 10, 1993, for the mark GECKO HAWAII for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 4**.

9. Opposer has obtained United States Service Mark Registration No. 1,943,766, registered December 26, 1995, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 5**.

10. Opposer has obtained United States Trademark Registration No. 2,049,055, registered April 1, 1997, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 6**.

11. Opposer has obtained United States Trademark Registration No. 2,260,689, registered July 13, 1999, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 7**.

12. Opposer has obtained United States Trademark Registration No. 2,287,612, registered October 19, 1999, for the mark GECKO HAWAII for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 8**.

13. Opposer has obtained United States Trademark Registration No. 2,308,720, registered January 18, 2000, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 9**.

14. Opposer has obtained United States Trademark Registration No. 2,347,417, registered May 2, 2000, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 10**.

15. Opposer has obtained United States Trademark Registration No. 2,446,676, registered April 24, 2001, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 11**.

16. Opposer has obtained United States Trademark Registration No. 2,453,448, registered May 22, 2001, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 12**.

17. Opposer has obtained United States Trademark Registration No. 2,463,090, registered June 26, 2001, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 13**.

18. Opposer has obtained United States Trademark Registration No. 1,903,602, registered July 4, 1995, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 14**.

19. Opposer has obtained United States Trademark Registration No. 2,482,688, registered August 28, 2001, for the mark GECKO for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 15**.

20. Notwithstanding Opposer's rights in and to said GECKO TRADEMARKS, Applicant, on information and belief, filed an application for registration of 8010 GEKKO (stylized) in International Class 014 for jewelry, bracelets, rings, necklaces, and earrings. Said application was published for opposition in the Official Gazette on November 11, 2008.

21. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a First Request to Extend Time for Filing this Notice of Opposition against the mark 8010 GEKKO (stylized), Serial No. 77/492,941, until Saturday, January 10, 2009. A copy of said Request to Extend Time is attached hereto as **Exhibit 16**.

22. Applicant's 8010 GEKKO (stylized) mark is confusingly similar to Opposer's GECKO TRADEMARKS and its registration and use by Applicant on the goods claimed in the subject applications is likely to cause confusion, deception and mistake.

23. Applicant's use of the mark 8010 GEKKO (stylized) interferes with Opposer's use of its GECKO TRADEMARKS and use of, or registration of, the mark 8010 GEKKO (stylized) by Applicant will seriously damage Opposer.

24. Opposer's GECKO TRADEMARKS are famous marks. Applicant began use of the mark 8010 GEKKO (stylized) after Opposer's GECKO TRADEMARKS became famous and Applicant's use of the mark 8010 GEKKO (stylized) causes dilution of the distinctive quality of Opposer's famous GECKO TRADEMARKS.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of the mark 8010 GEKKO (stylized) to Applicant be denied.

The filing fee for this Opposition in the amount of \$300 (one international class) is authorized to be charged to Opposer's representative's Deposit Account.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: January 12, 2009

By: _____



Bruce B. Brunda, Reg. No. 28,497
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer,
Gecko Trading Company, Inc.

T:\Client Documents\TBEAR\129M\NoticeofOpposition 129M.doc

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **January 12, 2009**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Robert L. Titley
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee WI 53202

Executed on **January 12, 2009** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Laura Szigeti

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 12, 2009

Opposition No. 91188363
Serial No. 77492941

ROBERT L. TITLEY
QUARLES & BRADY LLP
411 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-4497
tm-dept@quarles.com

Gecko Trading Company, Inc.

v.

Gekko Japan Co., Ltd

Bruce B. Brunda
Stetina Brunda Garred & Brucker
75 Enterprise Ste 250
Aliso Viejo, CA 92656
opposition@stetinalaw.com

ESTTA260134

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/v?qs=91188363>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for

the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address:**
<http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	2/21/2009
Deadline for Discovery Conference	3/23/2009
Discovery Opens	3/23/2009
Initial Disclosures Due	4/22/2009
Expert Disclosures Due	8/20/2009
Discovery Closes	9/19/2009
Plaintiff's Pretrial Disclosures	11/3/2009
Plaintiff's 30-day Trial Period Ends	12/18/2009
Defendant's Pretrial Disclosures	1/2/2010
Defendant's 30-day Trial Period Ends	2/16/2010
Plaintiff's Rebuttal Disclosures	3/3/2010
Plaintiff's 15-day Rebuttal Period Ends	4/2/2010

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and

introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for

pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.